

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village
(select one:)

of Montgomery

FILED
STATE RECORDS

OCT 18 2022

DEPARTMENT OF STATE

Local Law No. 11 of the year 2022

**A LOCAL LAW AMENDING SECTION 235-11.12 OF THE TOWN OF
MONTGOMERY ZONING CODE**

Be it enacted by the Town Board of the Town of Montgomery as follows:

See attached.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**TOWN OF MONTGOMERY
LOCAL LAW NO. 11 OF 2022**

**A LOCAL LAW AMENDING SECTION 235-11.12 OF THE TOWN OF
MONTGOMERY ZONING CODE**

Be it enacted by the Town Board of the Town of Montgomery, County of Orange, State of New York as follows:

Section 1. Purpose & Intent.

The Town Board of the Town of Montgomery hereby finds that the current solar law with amendments in the Town of Montgomery have been restrictive of development that the Town Board finds favorable and in the best interest of the health, safety and general welfare of the public. The recently adopted update to the Town Comprehensive Plan suggests amending the solar law to better balance New York State's aggressive climate change goals as well as protecting the local aesthetics and other considerations with solar farm development. This law aims to strike a more equitable balance between the aforementioned interests of the Town and its residents.

Section 2. Amendments.

Section 235-11.12 entitled "Solar Siting", Subsection (b), titled "Definitions," of Chapter 235, titled "Zoning," of the Code of the Town of Montgomery is hereby amended by adding a new definition for dual use solar systems to read as follows:

DUAL-USE SOLAR SYSTEM a configuration where solar energy generation and agricultural production (crops, livestock and livestock products and activities as defined by Agricultural and Markets Law) are directly integrated within the same land.

Section 235-11.12 titled "Solar Siting", Subsection D titled "Small Scale Solar Regulations Subsection 4 entitled "Freestanding or Ground Solar Energy Systems Subsection is hereby amended as follows:

Subsection (b) shall be amended to read as follows: In all residential zoning districts, including mobile home parks, the minimum setback for small-scale freestanding or ground mounted solar energy shall meet the applicable setback requirements for accessory structures for the applicable residential zoning district.

Subsection (c) shall be amended to read as follows: In all residential zoning districts, including mobile home parks small scale freestanding or ground mounted solar energy systems may only be installed in a rear yard or side yard, unless the landowner can demonstrate that it is only practical to locate the system in the front yard and that such system can be appropriately screened from neighboring properties as determined by the Planning Board.

Subsection (e) shall be amended to read as follows: In all business and industrial zoning districts, small scale, freestanding or ground mounted solar energy systems may be installed in the rear, side, or front yard; however such systems may be installed in the front yard with a minimum setback of 50 feet except that in the RA-0.5

and I-1 Zoning Districts, the front yards shall be the same as the minimum amounts required for said zone and in the RA-1 Zoning District the front yard requirement shall be the same as the most restrictive amount provided in the applicable bulk table.

Subsection (l) shall be deleted in its entirety.

Section 235-11.12F titled “Utility-Scale Solar Facility Regulation shall be amended as follows:

Subsection (2)(a) shall be amended to read as follows: “Utility Scale Solar Facilities are permitted especially in all zoning districts in the Town of Montgomery except for land areas in residential or agricultural zoning districts where more than thirty (30%) percent of land to be disturbed by the solar energy system has been classified as having NRCS Class I or Class II soils unless said system is classified as a Dual Use System in which event this restriction shall not apply, and subject to compliance with the application review, and approval process set forth in Section 235-11.12F in compliance with all other applicable town, state and/or federal requirements.

Subsection (2)(d)[5] shall be amended to add the following at the end of such subsection to read as follows: “In addition, for Dual Use Systems, a farm plan shall be prepared by a qualified agricultural expert that is deemed acceptable by the Planning Board. This plan shall adequately demonstrate the feasibility of an agricultural operation within the area of the solar array infrastructure including the use of and access necessary to provide water, labor and equipment necessary to facilitate such dual use system.”

Subsection (3)(b) shall be amended to read as follows: “A utility-scale solar energy system shall not occupy greater than 45% of the total acreage of the parent parcel or 80% for Dual Use Systems in all residential, business and industrial zones with a maximum of 20 acres of solar panel systems on any one parcel, unless such system is a Dual-Use Solar System in which instance the maximum will be forty (40) acres. A parent parcel shall not be subdivided to create independent lots for the purpose of proposing more than one (1) utility-scale energy system unless such a system is a Dual-Use Solar System and the Planning Board finds that based upon the evidence submitted the subdivision is necessary to achieve agricultural productivity of such a Dual-Use Solar System. For any system, the percentage of total acreage that is appropriate shall be determined by the Planning Board based upon the specific type of solar farm being proposed. The percentage of lot coverage for utility solar shall be measured based upon the perimeter of the total fenced in area that the solar equipment is situated and will not include any required setbacks or buffers and shall not be based on each individual panel and/or equipment. If such system is a Dual-Use Solar System, the percentage of lot coverage will be based upon the area upon which the solar equipment is situated, not including the area between the solar equipment and perimeter fence.

Subsection (3)(d)[1] shall be amended to provide as follows: Front yard, a minimum setback of 50 feet must be maintained from the front property line in all zoning districts.

Subsection (3)(e) shall be amended to provide as follows: Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing at a height of seven (7) feet to restrict unauthorized access, and if such system is a Dual-Use Solar System, the height of the perimeter fencing may be increased as necessary to protect the agricultural component of the project. If such a system is a Dual-Use Solar System, all setback areas can be included within the perimeter fence to ensure efficient agricultural operations. For utility scale system, said fencing shall incorporate adequate wildlife openings for smaller mammals and rodents to pass.

Subsection (3)(F)[1] shall be revised to read as follows: "Clearing of trees covering an area of 15% of total lot acreage for Utility Scale Systems and 25% for Dual Use Systems may be completed without mitigation except that such tree clearing shall not apply to any screening requirements imposed by the Planning Board and the Planning Board retains full authority to require buffering and/or screening on such properties as it deems necessary or as required by Town Code.

Subsection (3)(F)[2] shall be revised to read as follows: "Clearing of trees covering an area in excess of 15% of the total parcel acreage but no more than 25% of the total parcel acreage for utility and 25% of the total parcel acreage for Dual Use System may be completed provided that the excess acreage cleared shall be offset by planting trees of an equivalent variety and coverage on the same lot and/or adjacent lot under common ownership. The percentage of tree clearing shall be determined by the Planning Board and shall be based upon the percentage necessary to conduct the particular type of solar farm being proposed. If offsetting tree planting occurs, the Planning Board may impose restrictions on future clearing of trees on the subject lot(s) as deemed appropriate.

Section 2. Separability

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Montgomery hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 3. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 4. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 11 of 2022 of the (County)(City)(Town)(Village) of Montgomery was duly passed by the Town Board of the Town of Montgomery on October 6, 2022, in accordance with the applicable provisions of law.

2. ~~(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. ~~(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)


I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

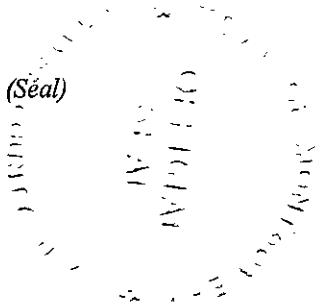
I hereby certify that the local law annexed hereto, designated as local law No. ____ of 20____ of the County of _____, State of New York, having been submitted to the electors at the General Election of _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.



Tara Stickles, Town of Montgomery Town Clerk
Clerk of the county legislative body, City, Town or Village
Clerk or officer designated by local legislative body



Date: 10/7/2022